blighted areas in the act is so broad as to provide no standards by which the agency may be guided, and hence it has the absolute power to determine what facts constitute any of the elements constituting blight. This same contention in almost identically the same language was made concerning the "Urban Redevelopment Law" of Pennsylvania in *Belovsky v. Redevelopment Authority, supra,* 54 A.2d 277. The answer given by the court there applies equally here (p. 283): "One of these assaults is directed against an alleged delegation of legislative powers contrary to the provision of Article II, section I of the Constitution, P.S., it being claimed that insufficient standards are set up in the statute to guide the Authority in exercising the powers with which it is vested. The fact is, however, that the act contains as definite a description of what constitutes a blighted area as it is reasonably possible to express; in regard to such factors as the selection and the size of the areas to be redeveloped, the costs involved, and the exact form which the redevelopment in any particular case is to take, it was obviously impossible for the legislature to make detailed provisions or blueprints in advance for each operation. * * * All that the legislature could do, therefore, was to prescribe general rules and reasonably definite standards, leaving to the local authorities the preparation of the plans and specifications best adapted to accomplish in each instance the desired result, a function which obviously can be performed only by administrative bodies. While the legislature cannot delegate the power to make a law,

it may, where necessary, confer authority and discretion in connection with the execution of the law; it may establish primary standards and impose upon others the duty to carry out the declared legislative policy in accordance with the general provisions of the act." See, also, *Housing Authority v. Dockweiler, supra,* 14 Cal.2d 437, 462; *People v. City of Chicago, supra,* 111 N.E.2d 626. *Blatz Brewing Co. v. Collins,* 69 Cal.App.2d 639 [160 P.2d 37], is not opposed to our views here. That case held that "the Legislature may not delegate authority to a board or commission to adopt rules which abridge, enlarge, extend or modify the statute creating the right." (P. 645.) That principle is not involved here.

Special Privileges

Respondent contends that the act violates section 21, article I of the Constitution, which prohibits the granting of special privileges, in that the act provides that sale of the redeveloped property may be made on the basis of its "fair value" arrived at as provided in the act, and as there is no minimum price set, the "fair value" may be less than the actual cost to the agency. Therefore, says respondent, the purchaser might profit on the transaction, giving him a special privilege over the rest of the public. The same contention was made in *Housing Authority v. Dockweiler, supra,* 14 Cal.2d 437, 460, concerning the fact that the houses to be erected were only to be rented to a certain class of citizens, and identically the same contention was made in *Opinion to the Governor, supra,*

69 A.2d 531, 534; *In re Slum Clearance in City of Detroit, supra,* 50 N.W.2d 340, 343; and in *Belovsky v. Redevelopment Authority, supra,* 54 A.2d 277. In all of them it was held that the fact that following the elimination of blighted conditions some incidental advantage might inure to private interests did not cause the taking to lose its public character nor make the statute unconstitutional.

PROHIBITION OF GIFTS OF PUBLIC MONEYS

Respondent contends that the furnishing of local grants-in-aid by the city provided for in the contracts sought to be executed here and the other public financial assistance to the agency proposed, constituted either the giving or lending of public moneys to private persons in violation of section 31, article IV of the Constitution. Actually there is no such gift or lending of money to private persons. The grants-in-aid are primarily for the providing of street improvements, fire protection, traffic control, schools, playgrounds, and other public services. The same objection was made to the Housing Cooperation Law in *Housing Authority v. Dockweiler, supra,* 14 Cal.2d 437, 458, and in *Veterans' Welfare Board v. Jordan,* 189 Cal. 124, 146 [208 P. 284, 22 A.L.R. 1515], to the statute authorizing a bond issue to acquire lands, improve and sell them to veterans. In both cases it was held that the funds were being used by a public body for a public purpose, and were not given or loaned to private persons. In *Patrick v. Riley,* 209 Cal. 350, the court stated (p. 357 [287 P. 455]): "As

indicated in the case of *City of Oakland v. Garrison, supra* [194 Cal. 298 (228 P. 433)], at page 302, the fundamental test of the constitutionality of a statute requiring the use of public funds is whether the statute is designed to promote the public interests, as opposed to the furtherance of the advantage of individuals; and such a statute should not be declared unconstitutional because of the fact that, incidental to the main purpose, there results an advantage to individuals." (See, also, *People v. City of Chicago, supra,* 111 N.E.2d 626.)

EFFECT OF SECTION 19, ARTICLE XIII, CONSTITUTION

In 1952 this section was added to the Constitution by adoption by the people of an assembly constitutional amendment. In part it provides: "All of the provisions of the Community Redevelopment Law, as amended in 1951, which relate to the use or pledge of taxes or portions thereof as herein provided, or which, if effective, would carry out the provisions of this section or any part thereof, are hereby approved, legalized, ratified and validated and made fully and completely effective and operative upon the effective date of this amendment." In the analysis of this amendment by the Legislative Counsel sent to the voters appears the following: "In addition, the measure would validate all provisions of the Community Redevelopment Law consistent with the foregoing relating to the use or pledge of taxes." In the arguments in favor of the amendment appears the following: "This Constitutional Amendment provides a method

of financing community redevelopment projects by relieving general taxpayers. Community redevelopment must be distinguished from public housing. The purpose is to eliminate blighted areas. Under the law, redevlopment, including the construction of streets, curbs, sidewalks and buildings, must be financed by private capital. However, a city or county must first acquire the property, if necessary by condemnation, because an individual, syndicate or corporation does not have the right of eminent domain and one property owner might refuse to sell and block the development.

"The difference between the expense of acquisition and clearing off the old, dilapidated buildings may be greater than the amount that may be received in the sale of the property for redevelopment in accordance with an officially approved plan. * * *

"If adopted, this constitutional amendment will readily facilitate the redevelopment of blighted areas in cities and counties as now authorized by the Community Redevelopment Act of the State of California. Blighted areas are an economic and social drag upon the community and it is good public business to eliminate them."

"While an amendment to a state constitution ratifying and confirming an act of its legislature is ineffectual to validate that act if it impair the obligations of a contract or divest vested rights, still such an amendment may otherwise cure the infirmities of an act, and to that extent the act is thenceforth

to be regarded as constitutional." (*Lee v. Superior Court,* 191 Cal. 46, 53 [214 P. 972].)

In view of the analysis sent to the voters, "If adopted, this constitutional amendment will readily facilitate the redevelopment of *blighted areas"* and the statement in the amendment that *"All* of the provisions of the Community Redevelopment Law, as amended in 1951 [the act with which we are dealing] * * * are hereby approved, legalized, ratified" etc., it is obvious that the people were not restricting their ratification to such portions of the act as dealt with blight caused by slum conditions and refusing ratification to blight caused by the other conditions enumerated in the act. (Emphasis added.)

EXCESS CONDEMNATION

Section 14½, article I, California Constitution.

This section, adopted in 1928, provides that in acquiring lands by gift, purchase or condemnation for memorial grounds, streets, squares or parkways, the state or any of its cities or counties may acquire additional lands within, in certain cases 150 feet, and in other cases within 200 feet, of the proposed improvement, and after the improvement is completed may sell the excess land not necessary for such improvement, with reservations concerning the use of such land so as to protect the improvement and to preserve its view, appearance, light, air and usefulness. The title to Senate Constitutional Amendment No. 16 (Stats, 1927, p. 2371), the means whereby section

14½ was placed on the ballot, states that it is a resolution to propose to the people as addition to the Constitution a section "relating to the taking of parcels of land by eminent domain where such border upon public improvements." An examination of the argument to the voters concerning the proposed section (see part I, page 17 of Arguments to Voters for the election of November 6, 1928) clearly shows that the section was intended primarily to apply to "little fractions of lots in the form of slivers or small triangles" left after making the particular improvements mentioned in the section, and in no manner was intended to apply either as an inhibition or otherwise to the projects contemplated in the act. Obviously there is no conflict between this section and the act. This section is limited to memorial grounds, streets, squares and parkways. Were there any such conflict the adoption in 1952 of section 19, article XIII, expressly recognized the Community Redevelopment Law, would end the conflict. It is interesting to note that in *Stute ex rel. Bruestle v. Rich, supra,* 110 N.E. 2d 778, it was held "even if purchase or condemnation of the fee of the real estate in the slum area does involve acquisition of a greater interest in such real estate than actually necessary to accomplish the purpose of eliminating slum conditions and providing against their recurrence" (p. 787) such acquisition was specifically authorized by section 10 of article XVIII of the Ohio Constitution, which provided for excess condemnation generally, rather than limiting it, as does our Constitution, to specified purposes.

Western Addition Finances

As to Western Addition, interveners contend that the proposed plan violates section 33741. That section requires that no plan shall be approved unless it contains adequate safeguards that the work will be carried out pursuant to the plan, and it is contended that the plan will cost far more than the estimates shown, that petitioners are not acting in good faith as they are concealing the true costs, and that the moneys to be received from the federal government are not adequate to complete the plan. Primarily the adequacy of the finances and the safeguards for completing the plan are for the determination of the administrative bodies. If they are not acting in good faith, interveners can bring an appropriate proceeding to determine that question in the trial court.

Clean Hands

Interveners contend petitioners are not entitled to equitable relief as they do not come into court with clean hands. This is based upon the contention that the contract which petitioners seek to have executed contains inaccurate data which should be corrected and brought up to date before execution, and that petitioners have prevented development of the area. As we have heretofore shown, this is not the proper forum in which to raise such question, interveners having no right to broaden the scope of the proceeding. (*Wright v. Jordan, supra,* 192 Cal. 702, 704, 714.) Whether the agreement is an improvident and unwise one for the Agency to make is for the Agency

and the city to determine. As said in *In re City & County of San Francisco,* 191 Cal. 172, 185 [215 P. 549], "In forming its judgment it must be presumed that the City considered the wisdom and policy of the whole plan in the light of the objects to be attained. The answer to adverse criticism is that the judgment of the City is conclusive in the absence of a showing of want of jurisdiction on the part of the City or a showing of bad faith on the part of its officers or gross extravagance or the existence of some fact sufficient to vitiate the contract." (See, also, *City & County of San Francisco v. Boyd,* 22 Cal.2d 685, 690 [140 P.2d 666].) " '* * * it is not for the courts to pass upon the merits of suggestions as to how the contract might be strengthened by amendments the desirability and effectiveness of which are for the consideration solely of the agencies and governing body to which the Urban Redevelopment Law has committed that responsibility.' " (*Oliver v. City of Clairton* (June, 1953), 374 Pa. 333 [98 A.2d 47, 51].)

We fail to see how the failure of the city to develop its portion of the Diamond Heights Area in the past estops or prevents it from redeveloping the entire area.

It should be emphasized that it is the combination in Diamond Heights of practically all the blight conditions mentioned in section 33042, subdivisions (a) to (d), showing a definitely compelling economic need, which permits the use of the act. Public agencies and courts both should be chary of the use of the

act unless, as here, there is a situation where the blight is such that it constitutes a real hindrance to the development of the city and cannot be eliminated or improved without public assistance. It never can be used just because the public agency considers that it can make a better use or planning of an area than its present use or plan. As said in *Schneider v. District of Columbia, supra,* 116 F.Supp.—— "* * * it behooves the courts to be alert lest currently attractive projects impinge upon fundamental rights."

The demurrers of respondent and interveners to the petition and of petitioners to the complaint in intervention are overruled. The motion of petitioners to strike all portions of the complaint in intervention other than those which constitute a demurrer to the petition is granted. It is ordered that a peremptory writ of mandate issue commanding respondent to execute the contracts referred to in the petition.

Bray, J.

Peters, P. J., and Wood (Fred B.), J., concurred.

Filed January 26, 1954,
Walter S. Chisholm, Clerk.

FILED
JUN 21 1954
HAROLD B. WILLEY, Clerk

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1953

No. [redacted] 87

FLORENCE VAN HOFF and VICTOR BERG,
Petitioners,

vs.

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, and THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,
Respondents.

RESPONDENTS' BRIEF IN ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1953

No. 778

FLORENCE VAN HOFF and VICTOR BERG,
Petitioners,

vs.

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, and THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,
Respondents.

RESPONDENTS' BRIEF IN ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA.

To the Honorable Earl Warren, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

QUESTIONS PRESENTED.

Basically the petitioners have presented only three questions.

I.

Is the California Community Redevelopment Law (Health and Safety Code Part I, Division 24, Sections 33000-33954)* violative of the Fourteenth Amendment?

II.

Did the reservation by the District Court of Appeal of the State of California of factual issues to be determined in a different proceeding deprive petitioners of procedural due process in contravention of the Fourteenth Amendment?

III.

Does the delegation of administrative fact finding powers by the State Legislature to administrative agencies valid under the State Constitution present a federal question which will confer jurisdiction upon this Court?

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*Hereinafter referred to as the "Act".

JURISDICTION.

None of the issues presented raise substantial federal questions which would warrant review by this Court on *certiorari*. The third issue as stated above presents no federal question.

STATEMENT OF THE CASE.

This litigation concerns the constitutionality of the California Community Redevelopment Law.

Respondents (petitioners below) are the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic,[1] and the City and County of San Francisco, a municipal corporation.[2]

The Agency has, pursuant to the Act, undertaken a program for the elimination and redevelopment of blighted areas of which the first two are the ones which were considered in the proceedings below, one being known as Western Addition Project and the other as Diamond Heights Project.

All of the procedural steps required by the Act were followed by the Agency. Specific findings as to the conditions of blight were made by the Agency, the Board of Supervisors of the City and County and the Planning Commission of the City and County. Public hearings on the adoption of the tentative plans

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[1]Hereinafter referred to as the "Agency".
[2]Hereinafter referred to as the "City and County".

for the Areas were held as required by the Act at which hearings all persons (including the petitioners herein) were given opportunity to be heard and to submit alternative plans.

Title I of the Housing Act of 1949 (P.L. 171, 81st Congress, 42 U.S.C. §1451 et seq.) authorizes Federal financial assistance to respondents to aid in this redevelopment. Pursuant to applications filed by the Agency with the Housing and Home Finance Administrator, the Administrator has advanced to the Agency $517,160.82, in addition to which sum the City and County has provided $78,962 to the Agency.

On June 4, 1953, the Agency adopted a resolution directing its chairman to execute on behalf of the Agency a contract with the United States of America for a loan of $16,022,000 and a capital grant of $6,012,000 to aid in financing Western Addition Project and a contract for the loan of $5,049,000 and a capital grant of $334,000 to aid in financing Diamond Heights Project, both of which contracts had been approved by the Agency and Board of Supervisors of the City and County. To satisfy the requirements of said contracts the City and County has undertaken to provide local grants-in-aid of $3,279,600 for Western Addition and $2,711,000 for Diamond Heights. The contracts had been executed by the Administrator; however, the Chairman of the Agency refused to execute said contracts.

It should be noted that petitioners make no claim of any deprivation of rights under the Housing Act of 1949, *supra,* or any other federal statute.

Respondents sought and secured mandamus in the State Court commanding the Chairman of the Agency to execute the contracts. The Chairman, although a respondent below, has not petitioned this Court for certiorari.

Accompanying the petition for writ of mandate (and part of the Record before this Court) were exhibits containing the various resolutions and ordinances of the Board of Supervisors of the City and County, tentative plans of the projects, reports and photographs of the areas and other data.

The interveners (petitioners herein) were granted leave to intervene.

A complete summary of the facts and record is contained in the Opinion of the Court below. (Appendix B Petition for Writ of Certiorari, pages 2 to 9 inclusive.)

The District Court of Appeal denied a petition for rehearing (123 Adv. Cal. App. 355), and a petition for hearing was denied by the Supreme Court of California (R. p. 605).

At no place was it charged in the complaint in intervention as is now contended (Petition, page 9), that the findings of respondents (petitioners below) or any administrative agency were made fraudulently, arbitrarily or capriciously.

Nowhere in the record is there any evidence as stated by petitioners herein (Petition, page 7) that the respondents propose to take vacant land under the power of eminent domain and sell it to private builders for expensive "view" homes and apartments.

After the petition for hearing was denied by the Supreme Court of California, the District Court stayed the execution of the writ of mandate insofar as it applied to the Diamond Heights Project in order to give interveners (petitioners herein) an opportunity to file a petition for Writ of Certiorari with this Court.

The Western Addition Project concerns a blighted slum area and no review has been sought of that portion of the Court's decision involving this project.

Diamond Heights is a blighted area. It consists of 325 acres. Much of the area was subdivided in 1863 and 1864; only 15 per cent of the area is occupied or used; 4 per cent is in improved boundary streets; 5 per cent playgrounds; less than 6 per cent interior streets and dwellings. Such unuse and lack of development is due to lots of irregular form and shape having been laid out without regard to the contours and other physical characteristics of the ground such as cliffs, steep gradings and outcroppings of rock; more than 500 parcels are in separate ownership which makes it impossible to effectively assemble the land by private means without public assistance and exercise of the power of eminent domain; there is wasteful street design, unsuited and unadapted to

the topography of the area; mapped streets of usable grade are connected with mapped streets of unusable grade, so steep as to render impossible the construction of usable streets; one third of said streets are too steep to be usable; 66 acres of such mapped streets remain unpaved and undeveloped, there being only 1.4 acres of paved streets. The major portion of the area is unserved by utilities of any kind. Existing public open spaces would be inadequate to serve the area if built up. Approximately 85 per cent of the area is vacant and undeveloped; 115 acres are in private ownership, of which only 17.8 acres are improved with houses, the remainder of the private ownership improvements consisting of truck yards, deteriorating sheds and two quarries. As a result of said faulty planning there is an economic dislocation and disuse of the area; a subdivision of lots into irregular form and shape and inadequate size for proper use and development; a layout of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions; nonexistence of adequate streets and utilities in the area. The area is characterized by the growing or total lack of proper utilization resulting in stagnant and unproductive condition of land potentially useful and available for contributing to the public health, safety and general welfare. The blighted condition is aggravated by the shortage of useful land in the city for residential development to alleviate the acute housing shortage and tends to render the lands unmarketable and thereby to force an abnormal pattern

of residential growth. This is the area referred to in the opinion of the Court below as "deteriorated" areas. (Petition for Writ of Certiorari, Appendix B, pages 4-6. See also photographs constituting Exhibits E, F, G and H, Record pages 287-293.)

ARGUMENT.

1. THE ACT IS NOT VIOLATIVE OF THE FOURTEENTH AMENDMENT.

The ultimate basic question presented is:

> "Is redevelopment (as defined in the Community Redevelopment Law) a public use and purpose?"

Petitioner recognizes (Pet. pp. 5, 11) that this Court has never condemned as a violation of the Fourteenth Amendment a taking upheld by the State court as a taking for public uses in conformity with its law.

Kaskel v. Impellitteri, 306 N.Y. 73, 115 N.E. 2d 659, certiorari denied, ... U.S. ....., 98 L. Ed. (Advance p. 512);

Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112;

Clark v. Nash, 198 U.S. 361;

Rindge Co. v. Los Angeles, 262 U.S. 700;

Hairston v. Danville & Western Ry., 208 U.S. 598.

The decision of the Court below upholding the constitutionality of the law is well considered, well reasoned, sound and consistent with the great weight

and authority of the law throughout the United States and is consistent with decisions of this Court.

The line of authorities holding that redevelopment statutes are constitutional is unbroken, except in Florida and Georgia, which decisions are barren of any legal reasoning in support of their conclusions and which the Court below found to be not even persuasive authority. The following citations uphold the constitutionality of redevelopment statutes:

Kaskel v. Impellitteri, New York Court of Appeals, 306 N.Y. 73, 115 N.E. 2d 659 (1953), certiorari denied, ... U.S. ....., 98 L. Ed. (Advance p. 512);

People ex rel. John Gutknecht v. City of Chicago, et al., Supreme Court of Illinois, 414 Ill. 582, 111 N.E. 2d 626 (1953);

Oliver v. City of Clairton, Supreme Court of Pennsylvania, 374 Pa. 333, 98 A. 2d 47 (1953);

Opinion of the Justices, 254 Ala. 343, 48 So. 2d 757 (1950);

Rowe v. The Housing Authority of the City of Little Rock, et al., Supreme Court of Arkansas, 220 Ark. 698, 249 S.W. 2d 551 (1952);

John F. Zurn v. The City of Chicago, et al., Supreme Court of Illinois, 389 Ill. 114, 59 N.E. 2d 18 (1945);

People ex rel. William J. Tuohy v. City of Chicago, et al., Supreme Court of Illinois, 394 Ill. 477, 68 N.E. 2d 761 (1946);

People ex rel. Tuohy v. City of Chicago, et al., Supreme Court of Illinois, 399 Ill. 551, 78 N.E. 2d 285 (1948);

Chicago Land Clearance Commission v. Inez White, et al., Supreme Court of Illinois, 411 Ill. 310, 104 N.E. 2d 236 (1952);

In the Matter of Slum Clearance in the City of Detroit—Hastings, Gratiot, De Quindre and Mullett Streets, Supreme Court of Michigan, 331 Mich. 714, 50 N.W. 2d 340 (1951);

State ex rel. Bruestle v. Rich, Mayor, et al., Supreme Court of Ohio, 159 Ohio St. 13, 110 N.E. 2d 778 (1953);

Foeller v. Housing Authority of Portland and City of Portland, Supreme Court of Oregon, 198 Or. 205, 256 Pac. 2d 752 (1953);

Martha Belovsky v. Redevelopment Authority of the City of Philadelphia, et al., Supreme Court of Pennsylvania, 357 Pa. 329, 54 A. 2d 277, 172 A.L.R. 953 (1947);

Schenck v. City of Pittsburgh, et al., Supreme Court of Pennsylvania, 364 Pa. 31, 70 A. 2d 612 (1950);

Jayne L. Burt v. City of Pittsburgh, et al., judgment affirmed by the Supreme Court, 340 U.S. 802 (1950) (memorandum opinion);

Opinion to the Governor, Supreme Court of Rhode Island, 76 R.I. 249, 69 A. 2d 531 (1949);

George Ajootian v. Providence Redevelopment Agency of the City of Providence, et al.,

Supreme Court of Rhode Island, 91 A. 2d 21 (1952);

The Nashville Housing Authority v. City of Nashville, et al., Supreme Court of Tennessee, 192 Tenn. 103, 237 S.W. 2d 946 (1951);

Schneider v. District of Columbia, 117 F. Supp. 705;

Gohld Realty Co. v. City of Hartford, March 1954, Supreme Court of Errors, Connecticut, 104 A. 2d 365.

See particularly *People ex rel. Gutknecht v. City of Chicago,* supra, and *Oliver v. City of Clairton,* supra, holding the redevelopment of blighted vacant or open land to be constitutional.

The exercise of the right of eminent domain under a redevelopment project, carried out pursuant to state law, has been held by this Court not to be contrary to the Fourteenth Amendment to the Federal Constitution.

Burt v. City of Pittsburgh, 340 U.S. 802, 71 S. Ct. 53, 95 L. Ed. 589.

Burt v. City of Pittsburgh, supra, was an appeal from the United States District Court for the Western District of Pennsylvania. The appeal was decided by the Supreme Court of the United States without opinion in the following language:

"October 9th, 1950. Per Curiam: The motion to affirm is granted and the judgment is affirmed. *United States ex rel. Tennessee Valley Authority v. Welch,* 327 U.S. 546."

The decision of the District Court in the *Burt* case thus affirmed by this Court was not printed and therefore not readily available. For the convenience of the Court, said opinion is filed herewith marked "Appendix A."

See, also:

Robinette v. Campbell, 342 U.S. 940 [72 S. Ct. 569, 96 L. Ed. 699].

This Court has consistently recognized the broad concept of "public use" and "public purpose."

Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112;

U. S. ex rel. Tenn. Valley Authority v. Welch, 327 U.S. 546;

People of Puerto Rico v. Eastern Sugar Associates, 156 Fed. 2d 316, certiorari denied, 329 U.S. at 772.

Redevelopment statutes have been adopted by thirty-four states and four territories of the United States. The statutes in thirty jurisdictions contain provisions for the redevelopment of blighted vacant or open land. Title I of the Housing Act of 1949 also contains similar provisions.

The legislature has defined what is meant by the evil of blight and has provided the means for its elimination. The legislature's determination that blight, as so defined, is an evil and should in the public interest be eliminated, is not arbitrary, capricious or unreasonable. Such determination involves considerations of public policy concerning which reason-

able minds may differ. Under these circumstances, the courts are without constitutional authority to substitute their judgment for that of the legislature.

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179;

Olsen v. Nebraska, 313 U.S. 236, 247;

U. S. v. Carolene Products Co., 304 U.S. 144, 154;

Block v. Hirsch, 256 U.S. 135, 154;

Weaver v. Palmer Bros. Co., 270 U.S. 402, 410.

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2. DID THE RESERVATION BY THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA OF FACTUAL ISSUES TO BE DETERMINED IN A DIFFERENT PROCEEDING DEPRIVE PETITIONERS OF PROCEDURAL DUE PROCESS IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT?

Petitioners (interveners below) were not denied procedural due process by the Court's striking a portion of the complaint in intervention and restricting its decision to the constitutional questions involved.

The court below had the right to determine only the constitutional questions presented and to leave the decision of factual issues, if any, to a tribunal better adapted and equipped to hear and determine such issues.

Boskowitz v. Thompson, 144 Cal. 724 [78 Pac. 290];

Wright v. Jordan, 192 Cal. 704 [221 Pac. 915];

La Mesa etc. Irr. Dist. v. Halley, 195 Cal. 739 [235 Pac. 999];

Rescue Army v. Municipal Court, 331 U.S. 549.

Petitioners are not without remedy. They can (under the decision of the Court below) attack the findings and actions of respondents (petitioners below) in the proper forum. This is sufficient to assure procedural due process.

Utley v. City of St. Petersburg, 292 U.S. 106.

See:

Robinette v. Chicago Land Clearance Commission, U. S. Dist. Ct., N. D. Ill., 1951, No. 50,068 (Memorandum Order and Opinion, mandamus denied by this Court in *Robinette v. Campbell,* 342 U.S. 940),

wherein it is stated:

"In regard to plaintiffs' initial contention, i.e., that they should have been afforded notice, opportunity to be heard and judicial review of the finding by the administrative agency that the area is blighted and requires redevelopment, it should be noted that such administrative action is merely a preliminary step in the process of exercising the power of eminent domain. No property is taken in the proceeding, nor are the property rights of the landowners affected in any manner. The steps required to be taken precedent to the right to exercise of the power of eminent domain are legislative questions. The question of whether such steps have actually been taken is judicial. Further, in any condemnation suit instituted by the administrative agency, the trial court can determine whether these conditions precedent to the exercise of the right have been fulfilled. The hearing, therefore, in the suit in which it is sought to acquire property by eminent domain,

gives to the property owner the right and the opportunity to be heard on all questions on which he is entitled to a hearing and fulfills all the requirements of due process of law. Zurn v. City of Chicago, 1945, 389 Ill. 114. This view is confirmed by the United States Supreme Court in Rindge Co. v. Los Angeles, 262 U.S. 700, 709 . . ."

See also

Kaskel v. Impellitteri, 306 N.Y. 73, 115 N.E. 2d 659, certiorari denied, ... U.S. ....., 98 L. Ed. (Advance p. 512).

Petitioners cannot be heard to say that a public official should not perform his ministerial duty (in the instant case by not signing the contract), when he is refusing to do so on constitutional grounds, simply because petitioners do not share the opinion of the administrative and legislative arms as to what is necessary and proper in the public interest.

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3. DOES THE DELEGATION OF ADMINISTRATIVE FACT FINDING POWERS BY THE STATE LEGISLATURE TO ADMINISTRATIVE AGENCIES VALID UNDER THE STATE CONSTITUTION PRESENT A FEDERAL QUESTION WHICH WILL CONFER JURISDICTION UPON THIS COURT?

Petitioners concede (Pet. p. 34) that the Court below decided that there was no unlawful delegation of powers.

In *State of Ohio ex rel. Bryant v. Akron Metropolitan Park District,* 281 U.S. 74, involving a state

statute providing for the organization of park districts by petition to the Probate Judge of the county, who is authorized to appoint a board of park commissioners with power to acquire lands and levy assessments upon property especially benefited and upon all taxable property within the district, this court stated at page 79:

> "It was insisted by the taxpayers, plaintiffs in the state court, that these statutory provisions involved an unconstitutional delegation of legislative power to the probate court and to the non-elective park commissioners. We do not consider it necessary to consider at length this objection, or the other points sought to be made against the statute under the 14th Amendment, as, in view of the repeated decisions of this court, we do not find any substantial Federal question presented. Houck v. Little River Drainage Dist. 239 U.S. 254, 262, 60 L. ed. 266, 273, 36 Sup. Ct. Rep. 58; Orr v. Allen (D.C.) 245 Fed. 486, 248 U.S. 35, 63 L. ed. 109, 39 Sup. Ct. Rep. 23; Soliah v. Heskin, 222 U.S. 522, 56 L. ed. 294, 32 Sup. Ct. Rep. 103."

In *Dreyer v. People of the State of Illinois*, 187 U.S. 71, at pages 83 and 84, this court stated:

> ". . . A local statute investing a collection of persons not of the judicial department, with powers that are judicial, and authorizing them to exercise the pardoning power which alone belongs to the governor of the state, presents no question under the Constitution of the United States. The right to the due process of law prescribed by the 14th Amendment would not be infringed by a local statute of that character. Whether the

legislative, executive, and judicial powers of a state shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert powers which, strictly speaking, pertain to another department of government, is for the determination of the state. And its determination one way or the other cannot be an element in the inquiry, whether the due process of law prescribed by the 14th Amendment has been respected by the state or its representatives when dealing with matters involving life or liberty."

Petitioners also assert that there has been an unlawful delegation of legislative power by failure to provide adequate standards for a determination of blight in the Act.

The standards for the determination of blight are adequately set forth in the Act. (Secs. 33040-33045, inclusive.)

In its opinion the Court below stated:

"It is contended that the characterization of blighted areas in the act is so broad as to provide no standards by which the agency may be guided, and hence it has the absolute power to determine what facts constitute any of the elements constituting blight. This same contention in almost identically the same language was made concerning the 'Urban Redevelopment Law' of Pennsylvania in *Belovsky v. Redevelopment Authority*, supra, 54 A. 2d 277. The answer given by the court there applies equally here (p. 283): 'One of these assaults is directed against an alleged delegation of legislative powers contrary to the

provision of Article II, section 1 of the Constitution, P.S., it being claimed that insufficient standards are set up in the statute to guide the Authority in exercising the powers with which it is vested. The fact is, however, that the act contains as definite a description of what constitutes a blighted area as it is reasonably possible to express; in regard to such factors as the selection and the size of the areas to be redeveloped, the costs involved, and the exact form which the redevelopment in any particular case is to take, it was obviously impossible for the legislature to make detailed provisions or blueprints in advance for each operation. * * * All that the legislature could do, therefore, was to prescribe general rules and reasonably definite standards, leaving to the local authorities the preparation of the plans and specifications best adapted to accomplish in each instance the desired result, a function which obviously can be performed only by administrative bodies. While the legislature cannot delegate the power to make a law, it may, where necessary, confer authority and discretion in connection with the execution of the law; it may establish primary standards and impose upon others the duty to carry out the declared legislative policy in accordance with the general provisions of the act.' See, also, *Housing Authority v. Dockweiler, supra,* 14 Cal. 2d 437, 462; *People v. City of Chicago,* supra, 111 N.E. 2d 626." (Decision Appendix (B), Petition, pages 43 to 45.)

See also,

Lichter et al. v. U. S., 334 U.S. 742.

CONCLUSION.

It might be well to point out what was said in the case of *Schenck v. City of Pittsburgh,* 364 Pa. 31, at page 37, 70 A. 2d 612, at page 615:

> "If the Urban Redevelopment Law were to be held to apply only to the clearing of blighted residential areas and the reconstruction of dwelling houses thereon there would have been no reason for its enactment since it would have added nothing to the Housing Authorities Law, 35 P.S. § 1541 et seq., already in force. On the contrary, the Urban Redevelopment Law was obviously intended to give wide scope to municipalities in redesigning and rebuilding such areas within their limits as, by reason of the passage of years and the enormous changes in traffic conditions and types of building construction, no longer meet the economic and social needs of modern city life and progress."

And as decided so aptly and so well by the California Supreme Court in *Housing Authority v. Dockweiler,* 14 Cal. 2d 437, 463:

> "As stated in *Dornan v. Philadelphia Housing Authority,* supra, 836, legislation of this type naturally invites 'the attack of those who are inclined to regard all experiments in our social and economic life as presumptively unconstitutional. Such challenges must fail, however, if, upon analysis, it appears that the only novelty in the legislation is that approved principles are applied to new conditions. Neither our state nor our federal Constitution forbids changes merely because they are such, in the nature or the manner

of use of methods designed to enhance the public welfare; they require only that the new weapons employed to combat ancient evils shall be consistent with the fundamental scheme of government of the Commonwealth and the nation; and shall not violate specific constitutional mandates * * *" (Italics added.)

For the foregoing reasons it is respectfully submitted that California courts have adequately determined the constitutionality of the Act, that there is no Federal question involved, and therefore the petition for a Writ of Certiorari should be denied.

Dated, San Francisco, California,
June 16, 1954.

Respectfully submitted,
Counsel for Respondent:
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MORLEY GOLDBERG,
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Of Counsel.

(Appendix A Follows.)

Appendix A

JUDGMENT AFFIRMED.
340 U. S. 802

Opinion
Slum Clearance and Urban Redevelopment
Pennsylvania
In the District Court of the United States
for the Western District of Pennsylvania
No. 8706 Civil Action

JAYNE L. BURT, Plaintiff

vs.

CITY OF PITTSBURGH, A Municipal Corporation, Urban Redevelopment Authority of Pittsburgh, a body public, corporate and politic, and The Equitable Life Assurance Society of the United States, a business corporation, Defendants.

Before Goodrich, Circuit Judge, and Gourley and Burns, District Judges.

Per curiam:

This case is before a three-judge court summoned pursuant to 28 U.S.C.A. #2281. The plaintiff seeks to enjoin the defendants from proceeding with a plan heretofore approved for the development of an area in the City of Pittsburgh. Plaintiff attacks the con-

stitutionality of the proceedings; hence the three-judge court. The statutes under which the Redevelopment project proceeds were before the Supreme Court of Pennsylvania in Schenck v. The City of Pittsburgh, 364 Pa. 31 (1950) and Belovsky v. Redevelopment Authority of the City of Philadelphia, et al., 357 Pa. 329, 54 A. 2nd 277 (1947). We think that all questions having to do with the constitutionality of the statutes under Pennsylvania law are determined by those decisions. During the past week the Court of Common Pleas of Allegheny County in Duffs Iron City College v. City of Pittsburgh, et al., has dismissed a bill similar to the one before us.

We are unanimously of the conclusion that the motion to dismiss should be granted. We do not find in the plaintiff's complaint and the exhibits attached thereto anything to indicate that the statutes themselves or the action of the constituted authorities in carrying them out violated the plaintiff's constitutional rights under the Constitution of the United States. We are reinforced in our conclusion that the City improvement project is not a matter into which the federal courts should rush lightly when we consider the words of the Supreme Court in U. S. ex rel. TVA v. Welch, 327 U.S. 546 (1946).

The motion to dismiss is granted, with costs.

(S.) Herbert F. Goodrich,
Circuit Judge;
Wallace S. Gourley, D.J.,
Owen M. Burns, D.J.

April 25, 1950.